IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Writ No. 393 of 2007.
Date of Decision: 01st October, 2007..

Major Singh ...Petitioner
through
Mr. Vikrampreet Arora, Advocate

Versus

State of Punjab & Ors. ...Respondent
through
Mr. Rajesh Bhardwaj, DAG, Punjab.
Mr. Sanjiv Ghai, Advocate for
respondents NO. 2 to 4.

CORAM:

HONBLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

The petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of *habeas corpus* for the release of his minor daughter – Arshpreet Kaur, who, according to him, is in illegal custody of respondents NO. 2 to 4.

The petitioner was married to Paramjit Kaur and out of the said wedlock, a female child – Arshpreet Kaur, namely, the alleged detenue was born in February, 2003. Unfortunately, Paramjit Kaur died an unnatural death in December, 2003 and FIR No. 169 dated 25th December, 2003 was registered against the petitioner and his parents under Section 304-B IPC etc. The petitioner was arrested in the afore-stated case. At that time, the custody of the child, with his

consent, was given to respondents NO. 2 to 4 who are maternal-grand-father, maternal-grand-mother and maternal uncle of the minor child.

As may be seen, the child is in custody of respondents No. 2 to 4 for the last about four years and she was hardly ten months old when her custody was taken by respondents No. 2 to 4.

Meanwhile, the petitioner appears to have been acquitted by the learned trial Court. He has now filed this petition for the custody of his minor daughter.

It is true that the petitioner is the natural guardian of the child and in normal course is entitled to her custody. However, paramount consideration to be kept in view by the Court is the welfare of the minor child. At the time of death of her mohter, the child was not in such a tender age that she would not know none except respondents No. 2 to 4, who have nursed her. She can not be expected to accept the petitioner or recognize him as her father all of a sudden, if instantly handed-over to the petitioner. The mechanical action, though lawfully, is bound to have lot of adverse impact on her psyche and may unnecessarily hamper her natural growth. At the same time, the petitioner's right to have the custody of his child can not be over-looked. However, before taking the permanent custody of the child, it is imperative that the petitioner develops emotional ties with her so that she starts recognizing and accepting him as her father.

In their endeavour to find out a workable solution, it is agreed between learned counsel for the parties that the child shall be taken by respondents No. 2 to 4 to the house of Sher Singh of village Kheri, Tehsil Kharar, District Mohali, who is their common relation on every alternative Sunday and the petitioner shall be entitled to visit the house of said Sher Singh and spend time with his daughter. The petitioner shall also be entitled to take her to the market or to some other public place in his exclusive custody. However, he shall hand-over the physical custody of the child to respondents No. 2 to 4 before 6 PM. Meanwhile, the petitioner, if so advised, may file a regular petition under the Hindu Minority and Guardianship Act. Both the parties shall abide by the decision of the Guardian Court. However, since respondents No. 2 to 4 want to retain the custody of the child till then, they shall not be entitled to claim any maintenance from the petitioner for and on behalf of the minor child.

It is also clarified and directed that if the petitioner files a regular petition for the custody of the child, the same shall be disposed of by the learned trial Court in accordance with law, without being influenced by the observations made here-in-above.

Disposed of.

October 01, 2007. ***(SURYA KANT)***
dinesh ***JUDGE***